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AND AH YIN, FOR A WEST OF HA-REAS COUPTS.

On Appeal from Decision of the Chief Justice.

REPORE JUDD, C. J., N'CULLY, PRESTON, SUCK-RETON AND DOLE, J.J.

Opinion of the Court by Preston J. Mr. JUSTICE DOLE DISSENTING This is an appeal from a decision of the Chief Justice, ordering that

Man Nun and Ah Yin, two Chinese on behalf of whom an application for a writ of hobus corpus had been made, be remanded to the custody of the Marshal antil the steamship Australia should be again in port. From this decision an appeal was

The circumstances under which the matter came before the Chief Justice are as follows:

On the 20th December, 1887, a law was passed to come into effect on the first day of March, 1888, "to regulate Chinese immigration.

Sections 2 and 3 of the law read as follows:

"Section 2 From and after the 1st day of March, A. D. 1888, no vessel coming from parts beyond the Hawaiian Islands shall be allowed to land Chinese at any port in this Kingdom, unless said Chinese are provided with permits to enter the Kingdom, granted, signed and sealed by the Minister of Foreign Affairs of the Hawaiian Kingdom, under and subject to regulations to be prepared and published by him, by and with the consent of the Cabinet in Council, except as hereinsfter provided, and excepting all Chinese to whom or for whom permission to enter the Kingdom has heretofore been granted, as shall be shown by the records of the office of the Minister of For-

eign Affairs." Section 3. If any master of a vessel shall land or attempt to land any Chinese without such permit as aforesaid, he shall be liable on conviction, to a penalty of two hundred dollars for each Chinese unlawfully landed or attempted to be landed, and such passenger landed or attempting to land, shall be liable on conviction to a penalty of fifty dollars; and the master of such vessel shall be compelled to re-embark such Chinese as may have unlawfully landed, and upon his neglect or refusal so to do, after notification by the Minister of Foreign Affairs, he shall be liable on conviction, to a penalty of two hundred dollars or to

ing thirty days." On the 24th day of July last, the steamship Australia arrived in the port of Honolulu, the appellants be ing passengers. The appellant, Man Nun, having a passport or permit in the following form:

imprisonment for a term not exceed-

"No. 782 B Passrour, Issued under the regulations of March 25, 1884, controlling the immigration of Chinese into the Hawaiian Kingdem. FOREIGN OFFICE, HONOLULE,

May 25, 1885. Permission is hereby granted to Goon Sung, lately residing at Hakalan, Hilo, on the Island of Hawaii. to enter the ports of this Kingdom on his return from China.

J. S. WEBB, Secretary. This passport must be delivered up to the Customs authorities by the lder on arrival at any port of this

On the back is the following endorsement with the seal of the Hawaiian Consulate affixed:

Vise Hong Kong, 10th June, 1888. for J. Bell Irving, Hawaiian Consul-General." The appellant, Ab Yin, had a sim-

ilar passport granted to "Achong." The Customs authorities prevented the appellants from landing, and so notified the master of the Australia. On the 30th of July, Ab Hin petitioned the Chief Justice on behalf of the appellants, for a writ of Anders

"That the said Man Nun and Ah Yin are unlawfully and unjustly restrained of their liberty by H. C. Houdlette master of the Hawaiian steam vessel Australia on board of said steam vessel.

"That petitioner is informed and beliewes, and upon such information and behef, avers that the pretended cause of such restraint is, that the said Man Non and Ah Yin had presented passports or permits for entering Kingdom, which had been used before their presentation of the

"That petitioner is informed and believes that said Man Nun and Ab Yin are not restrained by virtue of any warrant or other process." The Chief Justice issued the writ

and appointed the next day (the 31st ). July) at 9:50 a. m. for the hearing.

process or warrant."

appeared and filed a supplementary appellants were legally detained by on board and such detention is, in Art. 9).

Captain Houdlette, "for the reasons our opinion, by due warrant and "No that the said Man Nun and Ah Yin process of law. are Chinese within the meaning of We therefore dismiss the appeal Chapter XXVIII. of the laws of 1887 and order the appellants to be reat the port of Honolulu from a for- tice-

In the Supreme Court of the Ha- eign port, to wit, the port of San wallan Islands-In Banco. Octo- Francisco, in the State of California, on board the steamer Australia. That said Man Nun and Ah Yin IN THE MATTER OF THE APPLICATION were not, upon their said arrival, and OF AH HIS ON BEHALF OF MAN NOS are not now, provided with any legal permit, or other sufficient authority to enter this Kingdom, as provided by said Chapter XXVIII., and that such detention as complained of by petitioner was, and is, owing to the refusal of the Customs officer of the Hawaiian Government to permit said respondent to land said Man Nun and Ah Yin upon Hawaiian soil.

As the Australia was to sail at noon, the Court, with the concurrence of counsel, adjourned the hearing until the 3d August, and admitted the appellants to bail in the sum of

At the hearing it appeared from the evidence of Man Nun, that neither he or Ah Yin had previously been in this Kingdom, and that they purchased the said passports from some Chinaman in the office of the Hawaiian Consul at Hongkong for the sum of \$28 each.

The Chief Justice allowed the sufficiency of the supplementary return made by the Attorney-General, and remanded the appellants to the custody of the Marshal until the return of the Australia

An appeal was taken, and with the consent of the Attorney-General, the appellants were admitted to bail. By THE COURT:- By the law in

question it appears to us the Legisature has clearly expressed its intention, to prohibit the landing of Chinese in the Kingdom, except in the cases specially provided for. It is contended that the appellants were detained in custody without warrant or due process of law. The statute provides that:

"The Collector-General or any Collector of Customs shall have the authority to detain any person detected in, or reasonably suspected of a violation of any of the provisions of this Act, and to hold him until a warrant of arrest can be obtained, and it is urged that the Collector-General had no authority to order the detention of the appellants, except for a time necessary to procure a warrant for their arrest.

But neither the Collector-General or the Government is bound to proceed against persons arriving in vessels in the manner of these appellants. They may take such steps as may be necessary to prevent such persons landing. Otherwise the whole scope and intent of the law might be defeated, by the authorities taking such persons from the vessel and charging them with attempting to land, for which a penalty of fifty dollars could be inflicted. The enforcement of such a fine would not deter the landing of such prohibited

It may be conceded that the return made by Captain Houdlette is in itself, not sufficient to justify the detention of the appellants. But we must look at the circumstances under which such return was made.

The application for the writ was made on the eve of the departure of the ressel.

We can well understand that the Captain would be desirous of relieving himself from the necessity of taking the appellants back, and would be glad of the chance of having the appellants released under the writ. The return was prepared by the appellants' counsel, and expressly states that the appellants were held

without any process or warrant. To allow the discharge of the appellants under such circumstances would render the process of this Court a means for enabling masters of vessels to evade the provisions of the law with impunity.

The suplementary return made by the Attorney-General puts the whole matter in issue, and we have to decide whether the facts stated in such return are a sufficient justification for the detention of the appellants, and whether at the time of the issuing of the writ they were detained under due process of law.

What is meant by authority, or due process of law! For answer we may refer to Hurd on Hobers Corpus, p. 401, and Church on Habous Gorpus, Sec. 16), and the authorities there

From these authorities, commencing with Lord Coke, it appears that ine process of law comprehends any authority, lawful warrant or proceeding, under which a person may be arrested, and a proceeding and warrant, either in deed or in law, without warrant.

The Legislature, in exercise of its undoubted right, has thought fit to prohibit the landing of Chinese in this Kingdom, except in certain cases, which do not apply to these appellants. And it is the duty of this Court to give effect to this legislation without considering its pol-

We cannot especive of any higher warrant or authority in law, than the The appellants were produced in express enactment of the Legislature Court and a return, prepared by within its constitutional limits, for their counsel, was filed by Captain bidding the landing of Chinese with Houdlette, "that he has the within out permits, and we are bound to named Man Non and Ab Yin in his hold, that the Government had, by enstedy by virtue of an order of the lits officers, full authority to prevent Collector-General of the port of Ho the landing of prohibited persons, notaln, who has ordered respondent upon the shores of this Kingdom. to held them, that respondent does; and in furtherance of such authority, not know the cause of such restraint to notify and direct the masters of and does not hold them under any vessels, arriving with such persons on board, to detain and prevent them The Chief Justice ordered the At. from landing. The law having im torney-General to be notified, who posed penalties upon the masters of vessels for landing such persons, it return, wherein he averred that the becomes their duty to detain them without due process of law." (Const.

(hereinbefore referred to). That | manded to the custody of the Mar said Man Nun and Ah Yin strived shal, as directed by the Chief JusCrown. Dated Honolulu, Oct. 22, 1888.

DISSENTING OFINION BY MR. JUSTICE DOLE.

It appears from the records in this case, that on the return day of the writ, July 31st, H. C. Hondlette, the respondent, the appellants, their counsel, and the Attorney-General were present in Court. The respondent filed his return to the writ, and the Attorney-General filed a document entitled, "Supplementary return by the Attorney-General," and prefaced by the following paragraph: "And now comes C Ashford, Attorney-General of the Kingdom, and on behalf of the Hawaiian Government, by the leave of the Court, makes this return supplementary to that made herein by H. C. Hondlette, the respondent named in said writ." From this it is clear that the Attorney-General intervened in the case in his official capacity. By Section 19 of the Hadeas Corpus Act, he is authorized to do so only when the petitioners are imprisoned on a criminal accusation, which is not the fact in this case. Section 18, which allows third parties interested in the detention, to be heard evidently does not intend to include the Government, it being provided for by Section 19, already referred to. I am able to concede, however, that a fair argument may be made upon the wording of Section 18 in favor of the right of the Government to be heard. But if the Attorney-General is properly in Court, he is not an thorized thereby to file a return, he is merely there at most, to be heard, and possibly to put in evidence. The statute is explicit upon this point. The person to whom the writ is directed shall make the return and it shall be signed by him, and sworn to, unless he is a sworn public officer, making the return in his official capacity, which can only mean a public officer to whom a writ of Assess corpus is directed; moreover, the Attorney-General's return is neither signed nor sworn to; it, therefore, seems proper to leave it out of the consideration of the case alto-

The return by Captain Houdlette was explicit according to the requirements of the statute, which are that a person to whom the writ is directed shall state first, whether he has or has not the party mentioned in the writ in his custody; second, if he has, he shall set forth the authority, the time and the cause of the the imprisonment, with a copy of any process or warrant, under which the party is detained. The return states, "that he has the within named Man Nun and Ah Yin in his custody, by virtue of an order of the Collector General of the pert of Honolulu, who has ordered respondent to held them, that respondent does not know the cause of such restraint and does not bold them under any process or warrant." This return. upon being filed, became evidence in the case, by the provisions of the statute. Testimony was taken by the Court, which in no wise rebutted the return, nor was in any way responsive to it. The gist of the evidence was, that the prisoners had never been in the Hawaiian Islands before, that they had purchased permits at the Hawaiian Consulate in Hong Kong, which had been originally issued to other Chinamen, and that these permits had been mind by the Hawaiian Consuls at Hong Kong and San Francisco.

The question which must decide this case is, was the imprisonment. by Captain Houdlette, of the prisoners, on board the steamer Australis, legal? If the proper soswer to this question is an affirmative one, the order appealed from must be sustained; if a negative one, the appellants are entitled to be discharged. Hurd on Habeas Corpus, 233.)

I agree with the majority of the Court, that the Hawaiian Legislature has the right to enact laws, not inconsistent with our treaties, prohibiting foreigners from entering the country; but the mere ensetment of a prohibition does not authorize any one, or even any officer of Government, to carry it into effect. Personal liberty is a matter of great and sacred importance, and the law will not tolerate interference with it by volunteers, however zealous and patriotic their motives may be. It is guarded by constitutional and statutory enactments which are the reflection and the fruit of centuries of struggle. It may only be infringed "by due process of law." A person may be restrained of his liberty by legal process under a criminal accusation for the purpose of the trial of such accusation, and he may be imprisoned by legal process. upon conviction of a criminal offense, as the authorized punishment thereof, but nowhere is it allowed that one should be restrained of his liberty without process of law, or imprisoned as a punishment for an offense without due trial and conviction of such offense.

The following are some of the enactments of our Government for the protection of the right of personal

"Each member of society has a

right to be protected in the enjoyment of his life, liberty and property, according to law." (Const. Art. 14). "No person shall \* \* \* be deprived of life, liberty or property

"No person shall be subject to punishment for any offense, except en due and legal conviction thereof, in a court having jurnsdiction of the

case." (Coast. Art. 6). "No person shall be held to an-

Paul Neumann for appellants; C. cept in cases of impeachment, or for of commissioners of immigration for said by Ruffin, C. J., to be that st W. Ashford, Attorney General for the offenses within the jurisdiction of a the different States, whose duty it tutes which would deprive a citizen

rant or other process therefor from some magistrate, except in the cases | he made his decision, legal and comin this chapter hereinafter provided." (Penal Code Chap. 49, Sec. exercise a judgment as to the status to this rule: (1) Where one has stances, the matter being within the committed an offense and shall en- jurisdiction of the collector under deavor to escape, he may be arrested | the Act, further consideration of the of justice in a seaport or town may ing immigration, provide an authorarrest persons without warrant upon ity-a tribunal, to examine into the a reasonable suspicion that they have committed or intend to commit from a foreign country before they an offense. (5) Officers of the police or customs may without warrant arrest persons charged with or suspected of smuggling, (6) Any col-lector of customs has the authority under Section 10 of the Act of 1887 to regulate Chinese Immigration, reasonably suspected of a violation courts in habens corpus cases should that a prisoner is detained in cusof any of the provisions of this Act find that such detention is legal, tody being charged upon oath with and to hold him until a warrant of simply because it is upon a finding being a deserter from the Royal arrest can be obtained."

The appellants were at the time of their detention as fully entitled to by law to act upon such findings of was committed by some person havthe protection of these enactments as any other persons within the Kingdom, inasmuch as by coming within Hawaiian jurisdiction their persons and property became subject to our laws. (Civil Code Sec. 6). "The privilege of Asbers corpus belongs o all men." (Const. art. 5).

The respondent, not an officer of the Government, deprived the appellants of their liberty under un order of the Collector-General, which order made no criminal charge against them, as we learn from the return in which the respondent says he "does not know the cause of such restraint;" so far as the Court is informed, it was merely an arbitrary the men without giving any reasons therefor. The Collector-General is urisdiction thereof. (Civil Code gration of 1887, Section 10, "to detain any person detected in or reahim no authority to interfere with pretended that the appellants were detained by the Collector-General the Chinese Immigration Act above quoted, nor is it pretended that they had been tried and found guilty of unlawfully landing or attempting to land under the provisions of the said Act, but the decree appealed from finds. "that they were rightfully restrained on board said steamship, by H. C. Houdlette, the master thereof, because of the rightful refusal of permit said Man Nun and Ah Yin to prisoner.

the collector of the port or by a ship master under his direction under the are the Act restricting the immigration of Chinese laborers, of May 6. 1882 the Act to regulate immigration of August 3, 1882, whereby provision was made to prevent the landing of foreign convicts, lunatics, idiots and pappers, and the Act of cial legislation. February 26, 1885, whereby provision was made to prevent the land as follows: "That before any Chinese passengers are landed from

"there was before the collector when petent evidence of facts on which to The following are the exceptions of the relator. Under these circumare allowed to come ashore, to acertain and decide whether they are entitled to land, and if such conclusion is against the right of a passen-

The Hawaiian Act to regulate Chiarriving from foreign ports, until cause \* \* \* \* question of the right of Chinese to 3 Harr. [Del.] 418, Impey's Shift. authorized by law to arrest without sengers to enter the country or to of any further investigation into the warrant persons charged with or detain them on board their vessel merits? suspected of smuggling for purposes for want of such right. His absence I find, however, under English and Expressio unius est exclusio alterius and course was the only alternative from Expressum facit cessare tacitum apply to granting a discharge. the discussion at this point and dispose of the argument for an implied made the further point, that as the General to detain passengers under

Because the statute has prohibited certain persons from entering the the customs officers of said port to country, is any one thereby authorland or be landed upon Hawaiian out the statute as a volunteer and shores," upon the ground of their under the mere act of prohibition to March 25, 1884. These regulations being Chinese without permits. The deprive individuals of their personal authorized the Foreign Office to brief of the Atterney-General does freedom? And if one acting under issue passports "to any Chinese resinot discuss the important question such a naked prohibition arrests an dent in this Kingdom who may deof the legality of the detention fur- individual, can such an arrest be sire to visit any foreign country and ther than to say "that it is incident said to be under legal process? I return therefrom." No provision to the statutory prohibition" against am compelled to answer both of was made in the regulations for the the landing of Chinese, and to refer | these questions in the negative and | to the cases of Chin Ah Socey, 3 so far to dissent from the opinion of Consuls or anyone. The regula-West Coast Rep. 603, and Ah Kee, 4 the majority of the Court. An illustions of September 1, 1885, first inid. 19, under the American Act of tration may make this point more troduced the requirement that Chi-1882 restricting the immigration of clear. Polygamy is prohibited by nese passports should be vised, and Chinese laborers. Upon examining statute and a penalty provided for such requirement applied only to these cases, I find that in both of it. No one would, however, be there—the passports issued under such new them, the issue was not whether the by authorized to arrest a person of regulations. From these circumdetention was lawful, but whether, his own motion, and deprive him of stances, it is clear that the Consuls upon finding that the detention was his liberty to prevent him from in viseing these passports, acted lawful, the Court had the authority transgressing the statute. The Le- without authority from the Hawaito order the deportation of the gislature has relied upon the penalty ian Government, and that their I find however, from these and one may use deprivation of liberty affecting the validity of the pass-other American cases, that the American cases, the American cases can be considered to the case can be consid ican Courts recognize a detention by a course is not authorized by the ion that if this Court had the right to restrict Chinese immigration doubt, they could only hold that the various statutes restricting immigration; it is not for the Court to say anywise bound or affected by the that the penalty is insufficient and therefore measures not provided in the statute, even to the extent of deprivation of liberty, may be used to give it effect. I think that this would be open to the charge of judi-

From my examination of our law and of cases in other countries. I am ing of immigrants under a contract compelled to find that the detention to labor in the United States. Sec of these prisoners was illegal and tion 9 of the said Act of May 6th is without process of law. Chancellor Kent says, "The better and larger definition of due process of law is, that any such vessel, the collector or his it means law in its regular course of visit and then set sail for Barbadoes and deputy shall proceed to examine administration through courts of the different Windward Islands, The justice. (2 Com. 13). "Lord Coke infeates with the list (of Chinese says that these latter words, per tepassengers) and with the passengers; gem terrae (by the law of the land) and no passenger shall be allowed to mean by due process of law, that is, two stewards, one cook and ten seamen, land in the United States from such without due presentment or indict. The Brunhilde is much admired by vessel in violation of law;" the violation of law in the unit of a ment, and being brought to answer the violation of law being the want of a proper certificate. Section 2 of the said Act of Angust 3d, provides for said Act of Angust 3d, provides for of the clause 'law of the land' is the same of the same of the land' is the same of the sam swer for any crime or offense (er. ) the appointment and authorization of the clause 'law of the land' is by several college classimates.

Police or District Justice, or in sum- shall be "to examine into the condi- of the rights of person and property mary proceedings for contempt) un- tion of passengers arriving at the without a regular trial according to less upon indictment fully and ports within such State in any ship the course and usage of the commo plainly describing such crime or or vessel; and if on such examination law, would not be the law of the offense, and he shall have the right there shall be found among such land." [4 Dov. N. C. 15, 2 Bour. to meet the witnesses who are produced against him face to face; to or any person unable to take care of fess in themselves directly to punish produce witnesses and proofs in his himself or herself without becoming persons, or to deprive the citizen of own favor, and by himself or his a public charge, they shall report his property, without trial before the counsel at his election, to examine the same in writing to the collector judicial tribunals, and a decision upthe witnesses produced by himself, of such port, and such persons shall on the matter of right as determine and cross-examine those produced not be permitted to land." I have by the laws under which it vested against him, and to be fully heard in | not been able to refer to the said Act | according to the course, mode and his own defence." (Const. Art. 7). of the 26th February, 1885, but it is usage of the common law as derived "No arrest of any person shall be clear from the case of Cummins in from our forefathers are not effects made without first obtaining a war- 32 Federal Rep. 76, which says, ally laws of the land for these purposes." [4 Dev. N. C. 15, Coke va Harrison .

The prisoners were detained by persons who had no anthority to do so, they were not charged with an offense and held to trial therefor, not were they imprisoned as punishmen under conviction of an offense after under a verbal order of a magistrate, case might be dispensed with under | trial by a court having jurisdiction or without such order if no magis | the authority of In re Day, 27 Fed. | thereof; they were therefore entitled trate be present. (2) One in the act Rep. 678," that the collector is by to their discharge. "One who deof committing a crime, may be ar- the Act specially authorized to tains another by written authority rested by any one without warrant. examine into and decide the question | can return only that authority; and 3) When a crime has been committed of the right of a passenger to land. if it be insufficient, we believe the ted, persons near the place under It will be seen therefore, that each general practice and law now to be suspicious circumstances may be ar- of these three American statutes, that the prisoner is, as to that special rested without warrant. (4) Officers enseted for the purpose of restrict commitment, entitled to his discharge." [Church on Hobens Cor-pus 162]. "If it should appear case of passengers coming into port | manifest on an examination of those proceedings by the Court that the Court of Chancery [the committing Court | has exceeded its authority and that Mr. Yates is illegally impris oned, I would ask, whence is the ger to land, the law authorizes the necessity of any further investigacollector to detain him on board, tion into what has been called the Under these provisions of law, it is a merits of the present case." [Yates to detain any person detected in or matter of course that the American vs. People, 6 Johns. 269]. "A return of fact by duly authorized tribunals. Leinster Regiment, held insufficient; and made by collectors authorized it ought to have appeared that he ing authority to commit." Earl Mountmorris, Reid et al. 1 nese immigration of 1887, on the Ridg. 460. Church on Habeas Corother hand, contains no provisions pus 200]. "For if the commitment whatever for the detention of Chi- be against law, as being made by nese passengers on board a vessel one who had no jurisdiction of the \* the Court are their right to enter the country shall to discharge him." [Ibid 208, 328, be ascertained; it does not confer 347]. "An arrest made by an officer upon any persons or officers what- beyond the limits of his authority is ever the authority to decide the void." [Ibid 348, Lawson vs. Buzines, land, except under Section 11 in 552, Hale P. C. 584, Skin. 676 pl. 2. which jurisdiction is conferred upon 12 Co. 130, Wilmot's Opinions, 106, police and district justices to de- Hurd on Habeus Curpus 331]. Even termine certain offenses under the the majority of the Court concode Act, including that of landing or that the return made by the respond attempting to land without the propent is in itself not sufficient to jusorder to the respondent to detain er permit. The Collector-General is tify the detention of the prisoners; given no authority to adjudicate the question of the right of Chinese pas-

of examination by the Court having of authority in the premises is em- American authorities, that the Court phasized by the fact that the Legis- in habous corpus proceedings where Sec. 656). He is also authorized by lature found it necessary, by the the detention is found to be illegal. the Act to regulate Chinese immi- express provisions of Section 10, to will sometimes, where it is probable confer on him "the authority to de from the evidence that an offense tain any person detected in or rea- has been committed, recommit the sonably suspected of a violation of any of the provisions of this Act, and any of the provisions of the p to hold him until a warrant of arrest to hold him until a warrant of arrest 3 East 157, People ex rel Walters vs. can be obtained." Beyond these can be obtained." If the collector Connor, 15 Abb. Pr. N. S. 430. Ex powers of restraint, the law gives had the general authority to detain Parte Ricord 11 Nev. 287]. I am inindefinitely a passenger, it would not clined to think that in the present the liberty of any person. It is not have been necessary to give him by case the Court had the power to comstatutory enactment, the lesser and mit the prisoners to the Police Court thority to detain him an honr or two for trial for unlawfully attempting under the provisions of Section 10 of until a warrant of arrest could be to land under Section 11 of the Staprocured. The two legal maxims, tute; it is clear to me that such a

> The coursel for the prisoners general authority in the Collector- permits held by them were vised by the Hawaiian Consuls at Hongkong and San Francisco, the Hawaiian Government was thereby bound to recognize such permits as sufficient to admit the prisoners. The passized to take it upon himself to carry ports or permits were issued under the Foreign Office Regulations of vise of these passports by Hawaiian as a prevention of polygamy, and no action was wholly immaterial as statute. The Legislature in the Act to entertain this question, which I anywise bound or affected by the action of its Consuls in the premises. Honolulu, October 22, 1888,

> > AROUND THE WORLD.

John J. Pheips Starts Again in the

John J. Phelps and his young wife sailed from New York on November 3d on his schooner yacht Brunhilde on a tour around the world. Captain Phelps expects to run to Bermuda for a short complement of the Brunhilde is the salling master, Thomas Whitticol; the mate, John Bort; beatswain, K. S. Mathieson;